IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7403 OF 2004.

Braose I.Pereira. .... Petitioner.

versu.

Municipal Corpn.of Gr.Mumbai. .... Respondents.

Shri A.C.Singh with Shri D.R.Shah for the Petitioner.

Shri A.J.Bhor for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 9th December, 2004.

P.C.:

1. Rule. The Respondent waives service. Taken up for final hearing forthwith.

2. The Petition is by the original Plaintiff who filed a Suit in the City Civil Court at Mumbai for challenging notice issued under section 354A of the Mumbai Municipal Corporation Act, 1888. It appears that the suit structure has been demolished. Thereafter a Chamher Summons was taken out by the Petitioner praying for amendment of the plaint. The amendment was sought for incorporating the challenge to the action of demolition and praying for declaration that the action of demolition is illegal and for consequential relief of reconstruction of the structure. The Chamber Summons has been rejected by the learned trial Judge by holding that nothing survives in the suit as cause of action under section

354A has come to an end.

3. In so far as the law relating to the amendment of pleadings is concerned, it is well settled. Normally all applications for amendment which are made at pre-trial stage are to be allowed, unless it is shown that the proposed amendment is barred by limitation. In my view in the present case such a ground for rejecting the application for amendment does not exist. Even if the amendment is allowed, the Respondent-Corporation can file Written Statement/Additional Written Statement and raise all permissible defences including the defence of bar of limitation, non-maintainability of the suit etc. If according to the Petitioner the action of demolition is illegal, he is entitled to challenge the said action. The impugned order is unsustainable and deserves to be set aside.

4. Hence I pass the following order:

(i) The impugned Judgment and order dated 5th March 2004 is quashed and set aside.

(ii) Chamber Summons No.1471 of 2003 is made absolute in terms of prayer clauses (a) and (b) thereof. Amendment to be carried within a period of four weeks from today.

(iii) The Respondent will be at liberty to file Written Statement/Additional Written Statement to the amended plaint. All contentions on merit of both the parties are kept open.

(iv) Rule is made absolute in the above terms with no order as to costs.

(v) Parties and the concerned Court to act on the authenticated copy of this order.

Judge.